

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

No. 82-2056

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SUPREME COURT, U.S.

ESCONDIDO MUTUAL WATER COMPANY, ET AL., PETITIONERS

v.

LA JOLLA, RINCON, SAN PASQUAL, PAUMA AND PALA
BANDS OF MISSION INDIANS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

MOTION FOR DIVIDED ARGUMENT

Pursuant to Rule 38.4 of the Rules of this Court, the
Solicitor General, on behalf of all the parties, moves that the
time for argument allotted to petitioners and respondents in this
case be divided, and that counsel for petitioners and the Federal
Energy Regulatory Commission each be allowed 15 minutes to argue
for reversal of the judgment below and counsel for the Mission
Indian Bands and the Secretary of the Interior each be allowed 15
minutes to argue for affirmance of the judgment below.

The instant case involves a challenge by the Mission Indian
Bands and the Secretary of the Interior to a license issued by
the Federal Energy Regulatory Commission permitting the Escondido
Mutual Water Company and the other petitioners to operate a small
hydroelectric project near Escondido, California. The court of
appeals reversed the Commission's order issuing the license,
holding: (1) that, under Section 8 of the Mission Indian Relief

Act (26 Stat. 714), the licensees are required to obtain right-of-way permits from three of the Mission Indian Bands before they may utilize the project facilities that occupy those reservations; (2) that the Commission was without authority to modify or reject any of the license conditions propounded by the Secretary of the Interior pursuant to Section 4(e) of the Federal Power Act (15 U.S.C. 797(e)); and (3) that, for purposes of Section 4(e), the license is not only "within" those reservations that the project traverses, but is also within those reservations whose water rights may be affected by the project because of their location directly downstream from the project.

The Federal Energy Regulatory Commission has filed a brief in this case urging reversal of the court of appeals' decision, and the Solicitor General intends to file a brief for the Secretary of the Interior urging affirmance of that decision. Each of the other parties has an important interest in the outcome of this case, and the views of the parties on the same side of the case are somewhat divergent with respect to certain issues. Accordingly, we believe that oral presentation of the positions of each of the parties would be of assistance to the Court.

Respectfully submitted.

REX E. LEE
Solicitor General

DECEMBER 1983